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& Associates, P.C. Attorneys at Law

Harry R. Blackburn*+~

June 13, 2008

Of Counsel
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Via CM/ECF and First Class Mail

Honorable Joseph J. Farnan, Jr.
United District Court for the
District of Delaware
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Wilmington, DE 19801

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REPLY TO:
MEDFORD OFFICE

Re: Your File No.: 163615
Principal: McDaniel Plumbing & Heating, Inc.
Obligee: Indian River School District
Bond No.: SSB 365837
Project: Sussex Central High School

RLI Insurance Company v. Indian River School District, et al.
United States District Court for the District of Delaware
Civil Action No. 1:05-cv-00858-JJF
Our File No. 729.004

Dear Judge Farnan:

As the Court's file will reflect, this office represents RLI Insurance Company in the above-referenced matter.

On June 3, 2008, Your Honor issued a Memorandum Opinion and a companion Order with respect to Summary Judgment Motions previously filed. Paragraph four of the Order directed the parties to provide the Court with a statement of issues unresolved by the rulings announced in the Memorandum Opinion. RLI therefore submits this letter in response to the Court's direction as to the outstanding issues.

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OUTSTANDING ISSUES

Firstly, based on Your Honor's rulings that RLI is not discharged from liability under the bond, RLI believes the following accurately reflects the Court's directive, but seeks clarification of its understanding:

- (1) RLI has no affirmative case to put on since the Court has eliminated RLI's claims for discharge from the Bond;
- (2) Indian River School District will now present its case in chief in support of its counterclaim as to both liability and damages;
- (3) RLI will then present its rebuttal evidence consistent with all its defenses set forth in its Answer with Affirmative Defenses to the counterclaim;
- (4) Indian River School District will be obligated to prove its claims of damages by a preponderance of the credible evidence; and
- (5) RLI will have the right and opportunity to challenge those proofs through cross examination and to present witnesses in support of all of the defenses set forth in RLI's Answer with Affirmative Defenses to the School District's Counterclaim.

Secondly, there is RLI's Motion for Reargument, filed today, to be heard and decided.

Thirdly, there is a Motion regarding RLI's expert, Damian Cassin, filed by Indian River School District on June 2, 2008, to be heard and decided.

Fourthly, there is RLI's Motion regarding the *de bene esse* deposition of Christian McCone also filed today, to be heard and decided. All of these motions are returnable on July 11, 2008 at 2:00 p.m.

Finally, the trial date of July 21, 2008 still remains.

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Thank you for your attention in this matter.

Respectfully yours,

/s/ Perry F. Goldlust

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